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10/659,865	09/10/2003	Rex W. Halverson	2910-002	5087

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EXAMINER

NEGRON, ISMAEL

ART UNIT

PAPER NUMBER

2875

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/659,865

Applicant(s)

HALVERSON ET AL.

Examiner

Ismael Negron

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte* Quayle, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-9, 11-18 and 20 is/are rejected.
- 7) ☒ Claim(s) 3, 10 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/2/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Title

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: **Decorative Illumination Chandelier and Umbrella such Chandelier.**

Abstract

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because it uses phrases which can be implied. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 4, 7, 8, 11-13, 16, 17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by KELLEY (U.S. Pat. 4,174,532).

KELLEY discloses an illumination arrangement having:

- **a patio table (as recited in claims 1 and 11), Figure 1, reference character T;**
- **the table having an horizontal surface (as recited in claims 1 and 11), Figure 1, reference number 33;**
- **a patio table umbrella (as recited in claims 1 and 11), Figure 1, reference character U;**
- **the umbrella having a canopy (as recited in claims 1 and 11), as seen in Figure 1;**
- **the canopy being supported by a plurality of ribs (as recited in claims 1 and 11), Figure 2, reference Character R;**

- **the umbrella having a vertical post (as recited in claims 1 and 11), Figure 1, reference character P;**
- **the post extending through the surface of the table (as recited in claims 1 and 11), column 2, lines 16-18;**
- **the ribs extending radially from the upper end of the post (as recited in claims 1 and 11), as seen in Figure 2;**
- **the umbrella having a plurality of radially extending struts connected to the ribs (as recited in claims 1 and 11), Figure 2, reference character S;**
- **a chandelier (as recited in claims 1 and 11), Figure 2, reference number 1;**
- **the chandelier having a frame (as recited in claims 1 and 11), Figure 2, reference number 5;**
- **the frame being configured to surround the post (as recited in claims 1 and 11), as seen in Figure 3;**
- **a plurality of means for connecting the frame to a corresponding one of the struts (as recited in claims 1 and 11), as evidenced by Figure 2;**
- **the means for connecting uniformly suspending the frame beneath the canopy (as recited in claims 1 and 11), as seen in Figure 2;**

- **the means for connecting suspending the frame at a plurality of circumferentially spaced locations (as recited in claims 1 and 11), as evidenced by Figure 2;**
- **the frame being suspended at a predetermined safe distance above the horizontal surface of the table(as recited in claims 1 and 11), as seen in Figure 1;**
- **a plurality of decorative illumination means (as recited in claims 1 and 11), Figure 2, reference number 13;**
- **the illumination means being mounted on the frame (as recited in claims 1 and 11), column 2, lines 38 and 39;**
- **the frame being configured in the form of a ring (as recited in claims 2 and 12), as seen in Figure 3;**
- **a plurality of holders (as recited in claims 4 and 13), Figure 2, reference number 17;**
- **the holder being connected to the frame for each removably receiving one of the decorative illumination means (as recited in claims 4 and 13), column 2, lines 41-45;**
- **the decorative illumination means being an incandescent lamp (as recited in claims 7 and 16), column 2, line 40;**
- **the decorative illumination and connecting means being interspersed around the frame (as recited in claims 8 and 17), as evidenced by Figure 2.**

Regarding method Claim 20, such limitations were considered as inherently disclosed by the structural limitations of the patented arrangement of KELLEY (as detailed above).

Regarding the recitation of the structural features of the umbrella and table, the applicant is advised that while such limitations were considered as the are properly presented in independent Claim 11, they do not limit the claimed invention as presented in Claim 1. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). In this case, Claim 1 recited a chandelier suitable for mounting on a patio table umbrella, not actually mounted on such umbrella.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5, 6, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over KELLEY (U.S. Pat. 4,174,532).

KELLEY discloses an illumination arrangement having:

- **a patio table (as recited in claims 1 and 11)**, Figure 1, reference character T;
- **the table having an horizontal surface (as recited in claims 1 and 11)**, Figure 1, reference number 33;
- **a patio table umbrella (as recited in claims 1 and 11)**, Figure 1, reference character U;
- **the umbrella having a canopy (as recited in claims 1 and 11)**, as seen in Figure 1;
- **the canopy being supported by a plurality of ribs (as recited in claims 1 and 11)**, Figure 2, reference Character R;
- **the umbrella having a vertical post (as recited in claims 1 and 11)**, Figure 1, reference character P;
- **the post extending through the surface of the table (as recited in claims 1 and 11)**, column 2, lines 16-18;
- **the ribs extending radially from the upper end of the post (as recited in claims 1 and 11)**, as seen in Figure 2;
- **the umbrella having a plurality of radially extending struts connected to the ribs (as recited in claims 1 and 11)**, Figure 2, reference character S;

- **a chandelier (as recited in claims 1 and 11), Figure 2, reference number 1;**
- **the chandelier having a frame (as recited in claims 1 and 11), Figure 2, reference number 5;**
- **the frame being configured to surround the post (as recited in claims 1 and 11), as seen in Figure 3;**
- **a plurality of means for connecting the frame to a corresponding one of the struts (as recited in claims 1 and 11), as evidenced by Figure 2;**
- **the means for connecting uniformly suspending the frame beneath the canopy (as recited in claims 1 and 11), as seen in Figure 2;**
- **the means for connecting suspending the frame at a plurality of circumferentially spaced locations (as recited in claims 1 and 11), as evidenced by Figure 2;**
- **the frame being suspended at a predetermined safe distance above the horizontal surface of the table(as recited in claims 1 and 11), as seen in Figure 1;**
- **a plurality of decorative illumination means (as recited in claims 1 and 11), Figure 2, reference number 13;**
- **the illumination means being mounted on the frame (as recited in claims 1 and 11), column 2, lines 38 and 39.**

KELLEY discloses all the motivation of the claims, except the decorative illumination means being a candle (as recited in claims 5 and 14) or an oil lamp (as recited in claims 6 and 15).

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to use a candle, or an oil lamp as the decorative illumination means of KELLEY to be able to provide illumination for a patio umbrella even when an electrical power source was not available. In addition, the Examiner takes Official Notice of applicant's statements regarding specific types of light sources being devoid of any criticality to the subject matter of the invention, with incandescent lamps being one of many different light sources usable in the claimed chandelier (see paragraph 19, lines 2-5).

5. Claims 9 and 18 rejected under 35 U.S.C. 103(a) as being unpatentable over KELLEY (U.S. Pat. 4,174,532).

KELLEY discloses an illumination arrangement having:

- **a patio table (as recited in claims 1 and 11)**, Figure 1, reference character T;
- **the table having an horizontal surface (as recited in claims 1 and 11)**, Figure 1, reference number 33;
- **a patio table umbrella (as recited in claims 1 and 11)**, Figure 1, reference character U;

- **the umbrella having a canopy (as recited in claims 1 and 11),**
as seen in Figure 1;
- **the canopy being supported by a plurality of ribs (as recited in**
claims 1 and 11), Figure 2, reference Character R;
- **the umbrella having a vertical post (as recited in claims 1 and**
11), Figure 1, reference character P;
- **the post extending through the surface of the table (as recited**
in claims 1 and 11), column 2, lines 16-18;
- **the ribs extending radially from the upper end of the post (as**
recited in claims 1 and 11), as seen in Figure 2;
- **the umbrella having a plurality of radially extending struts**
connected to the ribs (as recited in claims 1 and 11), Figure 2,
reference character S;
- **a chandelier (as recited in claims 1 and 11),** Figure 2, reference
number 1;
- **the chandelier having a frame (as recited in claims 1 and 11),**
Figure 2, reference number 5;
- **the frame being configured to surround the post (as recited in**
claims 1 and 11), as seen in Figure 3;
- **a plurality of means for connecting the frame to a**
corresponding one of the struts (as recited in claims 1 and 11),
as evidenced by Figure 2;

- **the means for connecting uniformly suspending the frame beneath the canopy (as recited in claims 1 and 11), as seen in Figure 2;**
- **the means for connecting suspending the frame at a plurality of circumferentially spaced locations (as recited in claims 1 and 11), as evidenced by Figure 2;**
- **the frame being suspended at a predetermined safe distance above the horizontal surface of the table(as recited in claims 1 and 11), as seen in Figure 1;**
- **a plurality of decorative illumination means (as recited in claims 1 and 11), Figure 2, reference number 13;**
- **the illumination means being mounted on the frame (as recited in claims 1 and 11), column 2, lines 38 and 39.**

KELLEY discloses all the motivation of the claims, except the frame being configured in the form of at least one cylindrical metal ring with attached artistic elements (as recited in claims 9 and 18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to configured the frame in the form of at least one cylindrical metal ring with attached artistic elements (as recited in claims 9 and 18), since the courts have stated that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

Allowable Subject Matter

6. Claims 3, 10 and 19 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter:

Applicant teaches a chandelier having a frame configured to surround a vertical post of a patio table umbrella, such frame including a plurality of means for providing decorative illumination. The frame is connected to the struts by connection means, for uniformly suspending the frame from the struts under the canopy of the umbrella. The connection means being a hanger, or a double-ended hanger.

No prior art was found teaching individually, or suggesting in combination, all of the features of the applicants' invention, specifically connecting means having a hanger (as recited in Claim 3), or a double-ended hanger (as recited in claims 10 and 19), such connecting means being for suspending the claimed chandelier from the struts of a patio table umbrella.

Relevant Prior Art

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Finkel (U.S. Pat. 2,087,537), **Noyes** (U.S. Pat. 3,683,172), **Rushing** (U.S. Pat. 5,053,931), **Tseng** (U.S. Pat. 5,331,524), **Vest** (U.S. Pat. 5,463,535), **Phyle** (U.S. Pat. 5,584,564), **Molnar, IV** (U.S. Pat. 6,298,866), **Bilotti** (U.S. Pat. 6,659,616), **Li** (U.S. Pat. 6,830,058) and **Stewart** (U.S. Des. Pat. 474,801) disclose a plurality of illumination devices for use with patio table umbrellas.

Veenboer (U.S. Pat. 2,047,045), **Belling** (U.S. Pat. 2,453,695), **Meyer** (U.S. Pat. 3,686,498), **Zeller** (U.S. Pat. 3,847,333), **Blahut** (U.S. Pat. 4,115,845), **Murray et al.** (U.S. Pat. 4,237,530) and **Thompson** (U.S. Pat. 4,348,717) disclose a plurality of chandeliers configured to be positioned surrounding vertical posts, some being supported by hanging means attached to struts.

Conclusion


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ismael Negron whose telephone number is (571) 272-2376. The examiner can normally be reached on Monday-Friday from 9:00 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra L. O'Shea, can be reached on (571) 272-2378. The facsimile machine number for the Art Group is (703) 872-9306.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications maybe obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, go to <http://pair-direct.uspto.gov>. Should you have questions on access to Private PAIR system, contact the Electronic Business Center (EBC) toll-free at 866-217-9197.



JOHN F. CONWAY
PRIMARY EXAMINER

Jep
Inr

February 17, 2005